Remarks

The April 25, 2008 Official Action has been carefully reviewed. In view of the following remarks, favorable reconsideration and allowance of this application are respectfully requested.

At the outset it is noted that a shortened statutory response period of three (3) months was set forth in the April 25, 2008 Official Action. Therefore, the initial due date for response was July 25, 2008. A petition for a three month extension of the response period is presented with this response, which is being filed within the three month extension period.

As an additional matter, Applicants note that the Examiner did not consider the "PENTAPHARM, Product "ELHIBIN®" product catalog reference and the familydoctor.org reference because of the lack of a publication date. Applicants note that a substantial equivalent to the Pentapharm reference was previously submitted and considered by the Examiner on August 1, 2007 (see "ELHIBIN®" reference on page 14).

Applicants resubmit herewith the familydoctor.org reference with its publication date for consideration. In compliance with the duty of disclosure set forth in 37 C.F.R. § 1.56, Applicant is submitting herewith 1 Form PTO/SB/08b and a copy of the non-patent literature document listed thereon. This Information Disclosure Statement is being filed after the mailing of the first Official Action on the merits but before the receipt of a Final Official Action or a Notice of Allowance. This submission is not an admission that the document listed on the attached Form PTO/SB/08b constitutes prior art against the claims of this application. The Examiner is respectfully requested to confirm receipt and consideration of the cited documents by initialing and returning a copy of the attached Form PTO/SB/08b in accordance with MPEP §609. In the event that any fee is required, the Commissioner is authorized to charge Deposit Account No. 04-1406 of the undersigned attorneys.

Claims 1-4, 9, 13, 17-20, 25, and 29 have been rejected under 35 U.S.C §102(b) for allegedly being anticipated by WO 99/36050.

The Examiner has also rejected claims 9 and 29 under 35 U.S.C §103(a) as allegedly unpatentable over WO 99/36050.

The foregoing rejections constitute all of the grounds set forth in the April 25, 2008 Official Action for refusing the present application.

In accordance with the instant amendment, claim 33 has been added. Support for new claim 33 can be found throughout the application including, for example, page 6, lines 11-16 and page 7, line 13 through page 8, line 2. No new matter has been introduced into this application by reason of any of the amendments presented herewith.

In view of the present amendment and the reasons set forth in this response, Applicants respectfully submit that the 35 U.S.C. §102(b) rejection of claims 1-4, 9, 13, 17-20, 25, and 29 and the 35 U.S.C. §103(a) rejection of claims 9 and 29, as set forth in the April 25, 2008 Official Action, cannot be maintained. These grounds of rejection are, therefore, respectfully traversed.

CLAIMS 1-4, 9, 13, 17-20, 25, AND 29 ARE NOT ANTICIPATED BY WO 99/36050

Claims 1-4, 9, 13, 17-20, 25, and 29 have been rejected under 35 U.S.C §102(b) for allegedly being anticipated by WO 99/36050. The '050 application allegedly discloses using soy extracts for protecting skin from UV damage. It is also the Examiner's position that the soy extract is non-denatured because the soy beans are extracted without using enzymes or temperature.

Applicants respectfully disagree with the Examiner's position. The '050 application clearly states at page 11, lines 23-24 that "extracts of soy or clover may be prepared according to WO 93/23069" and Example 1 of the '050 application also clearly indicates that the extracts were

prepared according to the methods of WO 93/23069. Significantly, the processes for preparing red clover and soy products described by the '069 application (provided herewith) involve heating the plant product. Indeed, Example 1 of the '069 application provides the method for preparing red clover product. Significantly, the first step for obtaining the red clover extract is to heat the red clover to dryness (see, e.g., page 17, lines 31-32). The heat dried material is then extracted in an aqueous:organic solvent mix. Accordingly, it is clear that the extraction method described by the '069 application for the production of red clover extract includes heat denaturation of the red clover.

Additionally, Example 2 of the '069 application describes the preparation of a soy product. Significantly, the first step in the process of preparing a soy product according to the '069 application, is heating in dry air (see page 18, line 25). Accordingly, the methods of the '069 application require heat denaturation for the preparation of a soy product.

It is also noteworthy that the '050 application and the '069 application are concerned with using the isoflavone compounds and phyto-oestrogen compounds, respectively, contained within soy or clover (see Abstract and claims). The '069 application states that phyto-oestrogens are a class of compounds which include isoflavones (see, e.g., page 1). Significantly, isoflavones are not proteins, but rather are small chemical compounds which are resistant to heat which denatures proteins. Indeed, both the '050 and '069 applications use heat in their extraction of the isoflavone compounds from soy or clover. Accordingly, a skilled artisan, apprised of the '050 and '069 applications, would not have any motivation in omitting the heating steps described in the purification methods in these applications.

In view of the foregoing, it is evident that the '050 application, in view of the '069 application, only describes heat denatured products. Inasmuch as the instantly

claimed methods require topical application of at least one composition containing *a non-denatured soy product*, it is clear that the '050 application fails to teach each and every element of the instantly claimed invention. Withdrawal of the rejection is respectfully requested.

CLAIMS 9 AND 29 ARE NOT RENDEREDED OBVIOUS BY WO 99/36050

The Examiner has rejected claims 9 and 29 under 35 U.S.C §103(a) as allegedly unpatentable over WO 99/36050. The Examiner states that the '050 application "does not disclose the instant emulsifier range from about 0.1 to about 20%." However, it is the Examiner's position that it would have been obvious to a skilled artisan to use an emulsifier in the claimed range.

Applicants respectfully disagree with the Examiner's position. At the outset, claims 9 and 29 specifically recite that the topically administered composition comprises from about 0.1% to about 20% emulsifier. The Examiner acknowledges that the '050 application does not teach a composition comprising an emulsifier in such a range. As such, it is without question that the inclusion of claims 9 and 29 in the above 35 U.S.C. §102(b) rejection is improper.

Regardless, as described hereinabove, the '050 application, as evidenced by the '069 application, fails to teach or suggest the use of non-denatured soy product. Indeed, the '050 and '069 applications are concerned with the isolation of isoflavone compounds. Isoflavones are not proteins. As such, protocols which denature proteins are routinely used to isolate isoflavones. Indeed, the methods described in the '050 and '069 applications recite heating a plant product, such as soy beans. Inasmuch as the purification/extraction methods described in the '050 and '069 applications include heat denaturation, it is evident that the '050 application fails to teach or suggest the use of a non-denatured soy product as instantly claimed.

In view of the foregoing, it is clear that the

instant rejection of claims 9 and 29 under 35 U.S.C §103(a) is untenable. Withdrawal of the rejection is respectfully requested.

CONCLUSION

In view of the foregoing remarks, it is respectfully urged that the rejections set forth in the April 25, 2008 Official Action be withdrawn and that this application be passed to issue.

In the event the Examiner is not persuaded as to the allowability of any claim, and it appears that any outstanding issues may be resolved through a telephone interview, the Examiner is requested to telephone the undersigned attorney at the phone number given below.

Respectfully submitted,
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